

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 188 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

S A GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL for Petitioner

Mr M A Bukhari, APP for Respondent No. 1

MR AS KOTHARI for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/03/97

ORAL JUDGEMENT

By way of this Application under section 482 of the Criminal Procedure Code, the petitioner seeks direction to quash criminal case No.2242/90 pending in the court of Metropolitan Magistrate, 9th court, Ahmedabad. The non-applicant No.2-Dilipkumar M Soni filed a complaint in the court of Metropolitan

Magistrate, Ahmedabad stating that he was Branch Manager in Caprihans India Ltd. having its branch office at Ahmedabad. He was working under one Mr R K Talang, Regional Manager of Western Region. The complainant was called at the Bombay Office and he was forced to open a Bank account at Bombay with the accused on 7.2.1990. He was also forced to sign a letter addressed to the Provident Fund Commissioner to credit the amount of provident fund of the complainant to the said bank account. The complainant, after getting himself free from the clutches of the officials of Caprihans India Ltd., came to Ahmedabad and despatched a telegram addressed to S C Sudarsanam dated 10.2.1990 about the illegal and forceful acts committed by the officials. However, he received a letter from the office of the Regional Provident Fund Commissioner, Bombay stating that the amount of Rs.61,459/- is credited in the S.B. Account No.31379 situate at Bombay. It is stated by the complainant that inspite of the telegram sent by him to Caprihans India Ltd., the amount of provident fund was credited in the S.B. account at Bank of Maharashtra, Bombay to the tune of Rs.61,459/-. The say of the complainant is that the accused, by false representation, dishonestly misappropriated the amount received from the Provident Fund Commissioner and thus committed offence of criminal breach of trust. It is further stated that the accused is the Managing Director, who is not only an agent but is in the position of a trustee. The petitioner has wrongly been deprived of his provident fund amount. On this complaint, the learned Magistrate issued process against the accused petitioners.

2. It is contended by Mr S B Vakil, learned Advocate for the petitioners that the entire case is false and fabricated. He has invited my attention to Annexure 'B' an affidavit filed by Dilipkumar, the complainant, wherein he has agreed that he caused loss to the company to the tune of approximately Rs.11 lakhs. A stamped receipt is produced as Annexure 'C' wherein he has promised to pay the amount of Rs.11 lakhs to the company. There is another letter dated 10.1.1990 wherein the complainant has assured the Vice President of Caprihans India Ltd. that the amount misappropriated by him shall be paid within one and half month. My attention has also been invited to one Power of Attorney by which the complainant has given power of attorney to Suresh A Gandhi. The learned Advocate submits that the entire dispute is of civil nature. He submits that the present application is nothing but abuse of process of law, inasmuch as that while the complainant is guilty of misappropriation of huge amount of Rs.11 lakhs, as a

counterblast, has filed the present complaint.

3. Having considered the rival contentions of the parties, in my view there is prima facie evidence to show that inspite of the telegram sent by the complainant, his amount of provident fund was wrongly withdrawn. Thus, I am not inclined to interfere with the order passed by the learned Magistrate at this stage as it is not possible for me to look into the documents produced by the accused persons before this court. However, it will be open for the petitioner to approach the same court for recalling the order or may apply for discharge in view of the decision taken by the Apex Court in AIR 1992 SC 2206.

4. In view of the aforesaid, this Criminal Misc. Application is rejected. Rule discharged.